

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

In the Matter of:)	
)	
PREMERA BLUE CROSS CONVERSION)	
)	
R 03-07)	Order No 23 – Regarding
)	Premera Proposed Consultant
)	and Expert Report Redactions
)	

Premera Blue Cross (PBC) has proposed redactions of information contained in consultant reports for the Alaska Division of Insurance (division) and in its own expert reports. On March 8, 2004, PBC filed a memorandum in support of its proposed redactions with redaction logs identifying the basis for each proposed redaction. The division filed a response to PBC's memorandum in support of the proposed redactions on March 19, 2004. On March 30, 2004, PBC filed a reply.

In Order No. 7, I set forth the legal standards that PBC needed to meet to establish confidential treatment of information as trade secret or proprietary business information. The division asserts that PBC has not made the requisite showing required under AS 21.06.060(f). Relying on AS 45.50.940(3) and *In the Matter of Waste Mgmt. of Alaska*, the division states that PBC has not shown with respect to the information it seeks to redact 1) why the information "derive[s] independent economic value, actual or potential, from not being generally known to, and not readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;" 2) how the information "is the subject of efforts that are reasonable under the circumstances to maintain its secrecy[;]" or 3) what "good cause" exists for excluding all information in these categories from disclosure, including a showing that "the need for confidentiality outweighs the public interests in disclosure."¹

Notwithstanding PBC's alleged failure to meet its burden regarding the proposed redactions, the division only contests certain redactions as improper. These redactions fall into six general categories: 1) public information; 2) tax redactions that are either public or that would not cause economic harm or competitive disadvantage to PBC if disclosed; 3) conclusions of division consultants from which PBC derives no independent economic value; 4) factual

¹ In Order No. 7, the "good cause" standard advanced by the division was not identified as a factor that would be weighed in deciding whether to treat something as trade secret or proprietary business information. In the instant order, I do not decide how and to what extent the "good cause" factor enters into the analysis in AS 21.06.060(f). I believe I do not need to reach this issue as there other sufficient legal reasons to sustain or overrule the proposed redactions.

information not owned by PBC and readily obtainable by proper means; 5) inconsistent redactions; and 6) historical information. The division objects to the redactions in the above six categories because the information does not qualify as a “trade secret” or because “good cause” has not been shown for non-disclosure of the information. The division has not lodged specific objections to redactions in PBC’s expert reports or in the division’s consultants’ supplemental reports.

In response to the division’s objections, PBC has withdrawn some of the challenged redactions in the reports submitted to the division by its consultants in the fall of 2003. The contested redactions are:

- a. October 10, 2003 Navigant Consulting Report, redactions on pp. 58, 74, and 118²;
- b. October 20, 2003 LeBoeuf, Lamb, Greene & MacRae LLP Preliminary Report³; redactions on pp. 44 and 49 of the report and p. 3 of Appendix B.
- c. October 22, 2003 Signal Hill Capital Report; redactions on pp. 107, 158, 159, 160-164, 183, 184, and 187.⁴

No redactions have been withdrawn with respect to PBC’s own consultant reports and to the division’s consultants’ supplementary reports.

In principal, I agree that the majority of PBC’s proposed redactions may be designated as trade secret or proprietary business information, as asserted in PBC’s memoranda and supporting Affidavit of Kent S. Marquardt. But I also agree with the division that there are deficiencies in PBC’s efforts to establish certain information as trade secret or proprietary business information. PBC often relies on conclusory statements that do little to describe how release of the information would damage PBC or how PBC competitors would benefit from release of the information. *See* Affidavit of Kent S. Marquardt, ¶¶ 7 – 19. PBC also does not describe the steps it takes to maintain the secrecy and confidentiality of the redacted information other than to say it is non-public, that PBC takes “great pains” to do so and that only those with a “business need to know” have access to the information. *Id.* at ¶ 19.

Despite deficiencies in PBC’s showing, certain categories of information are more easily sustained than others as trade secret or proprietary business information. Under AS 21.06.060(f), I am satisfied that PBC information in the following categories may be designated as trade secret or proprietary business: 1) budgets, business planning information, financial projections, or

² The unredacted version of the Navigant report filed with the director reflects a December 11, 2003 date, which differs somewhat in pagination from the October 10, 2003 version of the report that PBC used for redaction purposes. Accordingly, some of the proposed redactions appear on different pages in the December 11th version of the report.

³ The unredacted version of the LeBoeuf report filed with the director reflects a print date of February 4, 2004, which differs somewhat in pagination from the October 22, 2003 version of the report that PBC used for redaction purposes. Accordingly, some of the proposed redactions appear on different pages in the February 4th version of the report. Appendix B appears to be the same in both versions of the report.

⁴ The unredacted version of the October 22, 2003 Signal Hill report filed with the director has different pagination than the redacted version of the report filed by PBC. Accordingly, some of the proposed redactions appear on different pages in the unredacted version of the report.

analyses of future financial results; 2) rate-setting practices, criteria, and formulae; 3) detailed health claim cost data and justification for usual, customary, and reasonable charge determinations; 4) provider reimbursement levels; 5) internal tax analyses and projections regarding future tax treatment; and 6) executive compensation and benefits.

It is less clear that historical information that reports PBC's overall operating results by state constitute trade secret or proprietary business information. *Cf. City of Fairbanks v. Alaska Public Utilities Commission*, 611 P.2d 493, 497 (with respect to disclosure of income statements and balance sheets, it was not obvious how company would be competitively disadvantaged by their release). I note also that certain state specific revenue and operating income information is public in the October 27, 2003 Blackstone Group Report on Valuation of Fairness of the Proposed Conversion, pp. 35 – 36. From this information, additional state specific information may be derived and, therefore, the same or substantially similar information appearing in Alaska reports should be public. Accordingly, I will order disclosure of certain historical information, subject to PBC providing a more exacting demonstration or illustration why that historical information should not be released. However, I am sustaining redactions of state specific historical data that the division has not challenged where the redactions reflect internal company analyses regarding historical operating performance and where actual source data is presented in particularized charts or graphs by line of business, membership statistics, market segments, product pricing, profitability factors, and the like.

THEREFORE, IT IS HEREBY ORDERED:

1. Of the remaining contested redactions related to the original division consultant reports, the following rulings apply:

a. September 23, 2003 Navigant Consulting Report (October 10, 2003 version)

(1) p. 58 all redactions sustained.

(2) p. 74 (which is p. 78 in unredacted version of the report): all redactions should be disclosed. These redactions reflect historical overall operating results for PBC-AK, for which PBC has not demonstrated as being trade secret or proprietary business information.

(3) p. 118 (which is p. 117 in unredacted version of the report): all redactions sustained except for statement regarding PBC-AK's average historical operating margin, for which PBC has not demonstrated as being trade secret or proprietary business information.

b. October 20, 2003 LeBoeuf, Lamb, Greene, & MacRae L.L.P. (October 22, 2003 version)

(1) p. 44: that portion of redaction beginning with "According to E & Y and ending with "corporate taxpayer" should be disclosed. This

information is revealed on pp. 3 and 14 of Price Waterhouse Cooper's October 27, 2003 report on tax matters, which is on the Washington web site. The remainder of the redaction beginning with "however" is sustained.

(2) p. 49: both redactions should be disclosed. PBC withdrew its objection in another part of this report (e.g. p. 48) regarding a stated operating margin goal. The percentage of possible rate increase after conversion for New PBC-AK is a conclusion of division consultant Reden & Anders and does not reveal any trade secret or proprietary business information. This information is more or less disclosed on p. 3 of the original Reden & Anders report that is on the division web site.

(3) p. 3 of Appendix B: the redaction beginning with "It is our understanding" is sustained.

c. October 22, 2003 Signal Hill Capital Report

(1) p. 107 (which is p. 109 in the unredacted version): the redactions related to PBC Washington's percent of 2002 revenue and the related pie chart should be disclosed. PBC has not demonstrated that this information represents trade secret or proprietary business information. The redactions are sustained as to the 2007 percentage revenue projection for PBC Washington and related pie chart.

(2) p. 158 (which is p. 160 in the unredacted version): the first four redactions should be disclosed. These redactions reflect historical overall operating results for PBC in Alaska, which PBC has not demonstrated as being trade secret or proprietary business information. The remaining four redactions related to future operating projections are sustained.

(3) p. 159 (which is p. 161 in unredacted version): the first two redactions should be disclosed. These redactions reflect historical overall operating results for PBC in Alaska, which PBC has not demonstrated as being trade secret or proprietary business information. The remaining two redactions relating to PBC 2003 budget results are sustained.

(4) p. 160 (which is p. 162 in unredacted version): This page contains a chart reflecting a Non For Profit Contribution Analysis between Alaska and Washington based on historical and projected averages in various operating categories. The historical line, which is redacted under each operating category, should be disclosed including the historical Alaska high and low percentage range. PBC has not demonstrated that this information represents trade secret or proprietary business information.

The redactions related to Base Projections, LOB Projections, LOB + ENT Projections, and Average of Historical and Base Projections are sustained.

(5) pp. 161 – 163 (which are pp. 163 – 165 in the unredacted version): The historical results from 1997A through 2002A as represented on the bar graphs on those pages should be disclosed. The historical averages for 1997 – 2002 under the bullet points on pp. 161 – 162 (163-164) and the accumulated net worth percentage on p 163 (165) also should be disclosed. PBC has not demonstrated that this information represents trade secret or proprietary business information. (Note that the information on p. 163 as furnished by PBC for the division web site is not redacted).

(6) p. 164 (which is p. 166 in the unredacted version): The pie chart related to August 31, 2003 actual results should be disclosed. PBC has not demonstrated that this information represents trade secret or proprietary business information. The remaining redactions related to budget results are sustained.

(7) p. 183 (which is p. 185 in the unredacted version): all redactions on this page should be disclosed. PBC has not demonstrated that this information represents trade secret or proprietary business information.

(8) pp. 184 and 187 (which are p. 186 and 189 in the unredacted version): the redactions are these pages should be disclosed. PBC has not demonstrated that this information represents trade secret or proprietary business information.

2. Of the uncontested redactions related to the original division consultant reports, the following rulings apply:

a. October 20, 2003 LeBoeuf, Lamb, Greene, & MacRae L.L.P. (October 22, 2003 version)

(1) p. 3 of Appendix B: the redaction beginning with “Additionally, it is not clear” should be disclosed. The same information is more or less stated on pp. 17 and 18 of PWC’s report on tax matters on the Washington web site.

b. October 22, 2003 Signal Hill Capital Report

(1) p. 182 (which is p. 184 in the unredacted version): the redaction under the first bullet point should be disclosed. PBC has not demonstrated that this information represents trade secret or proprietary business information.

3. Of the remaining proposed redactions related to the original division consultant reports, the redactions are sustained.

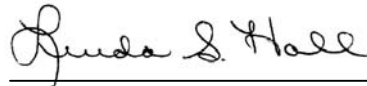
4. The redactions proposed for the division consultant supplementary reports are sustained, except to the extent that the redactions contain the same or substantially similar information that is disclosed under paragraph 1 of this order or that is disclosed because PBC has withdrawn the redaction. Such redactions are ordered disclosed.

5. The redactions proposed for PBC's expert reports are sustained, except to the extent the redactions contain the same or substantially similar information that is disclosed under paragraph 1 of this order or that is disclosed because PBC has withdrawn the redaction. Such redactions are ordered disclosed.

6. PBC shall have until the close of business Wednesday June 2, 2004 to make a sufficient showing that the information ordered disclosed under this order is trade secret or proprietary business information.

7. To ensure consistency between redacted and unredacted reports, PBC shall provide revised redacted versions of the division consultant original reports, which reflect withdrawn redactions and redactions ordered disclosed under this order, using the version of the reports provided to the director in unredacted form. If there are changes to redactions in the division's supplemental reports or in PBC's expert reports, then revised redacted versions of those reports also should be provided. To the extent feasible, all revised redacted version should be served on the director in Anchorage and on Joe Ver in the division's Juneau office by no later than close of business Friday, June 4, 2004. If not feasible, the revised redacted versions should be served on the director and Joe Ver by the close of business on June 7, 2004.

Dated: May 28, 2004



Linda S. Hall
Director